

ITEM #4
SUPPLEMENTAL ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 56026, subdivision (c)(4), 56171, subdivision (a), 56190, 56191, 56192, 56194, 56321, 56325, subdivision (b), 56346, 56362, subdivisions (c), (d), (e), and (f), and 56363.3

Statutes of 1980, Chapters 797, 1329, and 1353; Statutes of 1981, Chapters 972, 1044, and 1094; Statutes of 1982, Chapter 1201; Statutes of 1987, Chapters 311 and 1452; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapter 1361; Statutes of 1993, Chapter 1296; Statutes of 1994, Chapter 1288; and Statutes of 1995, Chapter 530

Title 5, California Code of Regulations, Sections 3043, subdivision (d), and 3067

Special Education

Community Advisory Committees; Governance Structure; Enrollment Caseloads; Extended School Year; Resource Specialist Program (excluding maximum caseloads); Maximum Age Limit – Age 22; Interim Placements; and Written Consent.

Executive Summary

Background

At the September 15, 1999, hearing, the Commission instructed staff and the parties to provide additional information to the Commission related to the legislative intent behind the enactment of Statutes of 1980, Chapter 797 (Master Plan). Specifically, Member Angelides requested staff and the parties to compile the following information for the Commission's review:

- Legislative history of the evolution of federal and state legislation over time, including the additional statutes added, matched against the funding evolution of the special education program.
- Legislative intent behind the enactment of Statutes of 1980, Chapter 797.
- A more detailed explanation of the Department of Finance's proportional offset approach.

On September 21, 1999, staff released a schedule for the submittal of the foregoing information. On September 30, 1999, both the claimants and the Department of Finance (DOF) submitted their responses to Member Angelides' request. On October 12, 1999, DOF submitted new funding tables for state, federal, and local general fund contributions. On October 13, 1999, the Legislative Analyst's Office (LAO) submitted comments on the legislative history and intent underlying Chapter 797.

Analysis

This analysis is organized as follows:

1. Overview of federal special education law prepared by staff;
2. A summary of the Legislative history and intent underlying Statutes of 1980, Chapter 797. Staff begins with the claimants', DOF's, and LAO's submittals followed by staff's analysis of material provided by Legislative Intent Service;
3. A summary of the Legislative history and intent underlying several chapters that modified the state's special education funding scheme prepared by the Legislative Intent Service; and
4. A summary of DOF's proportional offset argument followed by the claimants' response.

1. Federal Special Education Law

The Individuals with Disabilities Education Act (IDEA) was originally enacted as the Education of the Handicapped Act in 1970.¹ The Education of the Handicapped Act was renamed the Education for all Handicapped Children Act (Act) in 1975.² The legislative intent of the Act is summarized in the Senate Congressional Record of November 19, 1975, under the caption of "Education for all Handicapped Children Act of 1975-Conference Report."³ This record reflects the Senate's consideration of compromise amendments generated from a bicameral conference committee formed to address the extent of the federal government's fiscal responsibilities to ensure the right to an education for all handicapped children. The Senate's Legislative Clerk described this report as follows:

"The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S.6) to insure the right to an education for all handicapped children and to provide financial assistance to the States for such purpose, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report signed by all conferees."⁴

As explained by Senator Randolph of West Virginia, the agreed upon funding formula "will provide for a gradually increasing Federal fiscal role for the education of handicapped children."⁵ Senator Randolph further noted that the amendment sponsored by Senator Mathias of Maryland provided for a funding formula, beginning in fiscal year 1978, which specified a maximum percentage of the average per pupil expenditure multiplied by the number of handicapped children receiving special education and related services in a state. For 1978, the formula provided funding in the amount of five percent of the national average per pupil, increasing to ten percent in fiscal year 1979, twenty percent in 1980, thirty percent in 1981, and capping out at forty percent in 1982.

¹ Public Law Number 91-230 (1970).

² Public Law Number 94-142 (1975).

³ 121 Cong.Rec. 37409 (1975) (Exhibit B, Bates Page 3253).

⁴ *Ibid.*

⁵ *Id.* at 47410 (Bates Page 3254).

Senator Randolph also noted that the amendment included a safeguard to prevent unnecessary labeling of children as handicapped by providing that no more than twelve percent of children between the ages of five and seventeen, in any given state, may be counted as handicapped.⁶

Senator Randolph summarized his understanding of the Act as follows:

“This measure particularly addresses itself to the need for additional responsibility and accountability at the local level. While the state remains ultimately responsible and accountable to the Commissioner [of Education] for the attainment of the goal of educating all handicapped children, the role of local educational districts is paramount. This legislation emphasizes an increasing flow through of funds to the local educational agencies.”⁷

Senator Stafford of Vermont noted that, while the funding in the Act was not enough to achieve the stated goals of the Act, it represented a commitment to assist the states in providing education to the handicapped. Senator Stafford summarized his understanding of the history and intent of the Act as follows:

“The burden of education of our children has historically rested with the States. But there is a Federal responsibility which has clearly been established as well to assist in the education of children with special needs and to assist the states in providing special education and the related services. This area clearly deserves our continued support.

“We, in Congress, have shown our commitment fiscally to such a policy by appropriating \$110 million for this fiscal year. Surely, this does not represent all the money that is needed, but it does represent a substantial increase in the Federal dollar commitment to a program which had funding of only 37.5 million 3 years ago. Subject to the limits that the conference report puts on appropriations, I hope that the fiscal commitment can continue to grow.

“Make no mistake, educating our children is still very much a State responsibility, and this bill does not change that. It intends that the States and local districts provide the same support for handicapped children as they do for all other children. The federal dollars are to supplement the State and local commitment.”⁸

Senator Williams of New Jersey, one of the principal authors of the Act, explained the concerns and compromises faced by the Conference Committee in developing the funding formula:

“The conference report recognizes another of the realities of the times in which we live as a nation. We seriously reflected upon the fact that the economy is in poor condition – a condition which is creating an enormous hardship for so many of the people of America. And recognizing that unfortunate reality, the conferees adopted provisions relating to funding which took careful cognizance of present day Federal budgetary constraints. Thus, the conference agreement adopts

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Id.* at 37411 (Bates Page 3255).

authorization and maximum entitlements which are far below those contained in either bill as passed by the House or the Senate.

“In fiscal year 1976 funding levels are limited to \$100 million and in fiscal year 1977 the level is limited to \$200 million. Furthermore, we have reduced the maximum entitlement in fiscal year 1978 to 5 percent of the national average per pupil expenditure per handicapped child receiving services. And this level is gradually increased in subsequent years to a maximum entitlement of 40 percent of the national average per pupil expenditure per child served beginning in fiscal year 1982 and thereafter.

“We have taken this unusual action not because we believe that the funds in the initial years will be sufficient to absorb the necessary costs of educating handicapped children; but because we believe that it will allow for a reasonable pattern of growth in this program, conform to present fiscal constraints, and assure that our promises to handicapped children are realistic and that promises can be kept.”⁹

Senator Williams next explained the Conference Committee’s agreement regarding the distribution and use of the funds by the recipient states.

“With respect to the within-State distributions of funds, Mr. President, the conference agreement provides that State educational agencies will retain 100 percent control of the moneys for this and the next fiscal year. In fiscal year 1978—when the new formula goes into effect—the state will receive 50 percent of the funds it receives and will distribute the remainder to local educational agencies, subject to certain limitations which will also apply in fiscal year 1979 and thereafter—and which are discussed below. Beginning in fiscal year 19[8]0 the state will retain 25 percent of the funds and distribute the remaining 75 percent to the local educational agencies.

“The limitations on the distribution mechanism are, in my judgment, realistic and will serve to assure both flexibility to the States as well as guarantee that the funds will be properly targeted on handicapped children who are in the greatest need of services. All funds must be spent in a manner which is consistent with the priorities established under the act; that is funds must be spent first to provide services to handicapped children who are not receiving an education, and, second to provide services to children with the most severe handicaps who are receiving an adequate education. The conference agreement further provides that no funds shall be distributed to any local agency in any fiscal year if that agency would not be serving enough handicapped children so as to be eligible to receive \$7,500, or, if that agency has not submitted a local application as it is required to do so under the act and which application must contain a series of specific assurances designed to guarantee that it will be providing a free appropriate public education consistent with the provisions of this new law. Funds which are not distributed to local school districts because of these limitations are to be retained by the State educational agency but the agency must use these funds to assure the provision of

⁹ *Id.* at 37413 (Bates Page 3257).

a free appropriate public education to handicapped children residing in the area of the school district from which the funds were held back.

“Of the amounts received by a State in any fiscal year under the new formula, no State educational agency may spend more than 5 percent of (sic) \$200,000 which ever is greater for administrative purposes. Beginning in fiscal year 1979 and thereafter, with the exception of administrative funds and funds not distributed to local educational agencies because they are ineligible, no State may spend Federal funds in an amount greater than state funds being spent for the education of handicapped children. In this regard it should be made clear that a state does not have to spend new funds but must continue to spend at a rate so that federal funds do not exceed State funds. Also whereas the language of the bill requires that these Federal funds be matched ‘on a program basis’ it should be clear that such matching is only contemplated in overall areas of State activity with respect to education of handicapped children. Thus, a state would have to match Federal funds in major program areas such as personnel development, evaluation activities, or assuring the implementation of procedural safeguards in the act. However, this matching provision would not apply to specific programs which are conducted as part of the general area of activity such as a project for training teachers of deaf children, an evaluation of an [IEP] or conducting a due process hearing.”¹⁰

Senator Muskie of Maine, while voting in favor of the Act, expressed his concerns that the Act might never be funded in the manner anticipated by the drafters of the Act. Senator Muskie stated:

“We appear to be establishing a program that may not look like a big commitment now but may soon become a substantial one.

“It is the task of the authorizing committees to identify the needs for programs such as this, and I am especially appreciative of the Labor and Public Welfare Committee’s efforts to translate such needs with the clarity that has been exhibited in this legislation.

“However, the probability that we will fully meet these needs is small. Unless we forfeit on commitments to other important priorities in the Federal Budget, it strikes me as unlikely that we will be able to fund the program at the full authorization in the near future.”¹¹

Senator Beall of Maryland, echoed Senator Muskie’s concerns regarding funding of the Act in accordance with the Conference Committee’s recommendation. He added that “[a]lthough [appropriation] of these [Federal] funds have greatly improved the States’ service for handicapped children, it is not realistic for us to expect the fullest educational opportunity for handicapped children when we have not handled the barrier of insufficient resources.”¹²

¹⁰ *Id.* at 37413-37414 (Bates Pages 3257-58).

¹¹ *Id.* at 37419 (Bates Page 3263).

¹² *Id.*

This Conference Report was approved by a vote of 87 to 7, with six members not voting due to absence. Of these six members, the record reflects that two, if present, would have voted to approve the Conference Report. The provisions discussed in this hearing were included in the final bill, as enacted.

Staff's Conclusion

Sutherland Statutory Construction, a treatise on statutory construction, explains that reports of a legislature's bicameral conference committee appointed to adjust differences between the two houses represents the final statement of the terms agreed to by both houses and, "next to the statute, itself, is the most persuasive evidence of congressional intent."¹³ (Citations omitted) While staff was unable to timely obtain a copy of the Conference Report on "The Education for all Handicapped Act," the Congressional Record of the discourse of the Conference Report is also considered to be an acceptable source for determining legislative intent. As explained in *Sutherland*:

"On important congressional legislation it is customary to prepare a record of the testimony and arguments made before the committee. This record is available both for purposes of assisting the courts in determining issues of constitutionality and for purposes of statutory interpretation."¹⁴ (Citations omitted)

Accordingly, this Congressional Record is an acceptable source for considering the history and legislative intent of the IDEA. After review of this record, staff concludes that, at the time of enactment, it was never the intent of the Federal government that it would be able to provide funding in an amount that would absorb the necessary costs of educating handicapped children.¹⁵ Rather it was their intent that the federal dollars be used to supplement the State and local commitment,¹⁶ and that the funds were to be distributed in a manner consistent with the priorities established under the IDEA. The first priority was for the funds to be used to provide services to handicapped children not receiving an education and the second priority was to use the funds to provide services to children with the most severe handicaps who are receiving an adequate education.¹⁷

As for the use of matching funds, it was the intent of the IDEA that, where federal law requires funds to be matched "on a program basis," the matching is only contemplated to the overall program and matching is not required to occur within specific activities conducted as part of the overall program.¹⁸

¹³ 2A Sutherland, Statutory Construction (5th Ed. 1994) §48.08, pp. 339-340.

¹⁴ *Id.* at §11.12, p. 607.

¹⁵ See summary of Senator Williams' comments, page 4 of this document.

¹⁶ See summary of Senator Stafford's comments, page 3 of this document.

¹⁷ See summary of Senator Williams' comments, page 4 of this document.

¹⁸ See summary of Senator Williams' comments, page 5 of this document.

2. Legislative Intent Underlying Statutes of 1980, Chapter 797

The Claimants' September 30, 1999, Submittal¹⁹

The claimants' September 30, 1999, submittal begins with a summary of the legal bases under which the Commission is allowed to review and rely upon the submitted documents as evidence of the underlying legislative intent of Statutes of 1980, Chapter 797.

Exhibit A provides the claimants' summary of documentation regarding the legislative intent underlying Statutes of 1980, Chapter 797. In Exhibit A, the claimants provide an overview of each of the 21 attached exhibits. Specifically, the claimants contend that Chapter 797 was enacted "(1) to provide for statewide implementation of the California Master Plan for Special Education and (2) to provide a funding model in order to better enable the state and local districts to comply with the federal Education for All Handicapped Act."²⁰

Moreover, the claimants' contend that documents reveal that the Legislature intended to fully fund the state's Master Plan and freeze local general fund contributions at the 1979-80 fiscal year levels. In addition, the claimants maintain that these documents evidence that state funding of the federal mandate is not voluntary.²¹

Finally, the claimants contend that the state "bears a significant share of the responsibility" for any special education shortfalls due to the fact that the Master Plan failed to "live up to its promise of fully funding special education."²² Therefore, the claimants conclude the state must, under current law, reimburse school districts for costs they incurred in complying with any state mandated programs.

In this submittal claimants maintain their original positions that (1) the Master Plan has been significantly underfunded and (2) offsets, under Government Code section 17556, subdivision (e), only apply to revenues which are specifically intended to fund the mandate and which are provided in the statute containing the mandate.

The Department of Finance's September 30, 1999, Submittal²³

DOF's September 30, 1999, submittal consists of three attachments. Attachment 1 provides a spreadsheet that shows state and federal general fund increases for fiscal years 1979-80 through 1999-00. Attached to this spreadsheet is the Governor's proposed budget for each fiscal year. These pages show the state's appropriation for special education in the "Input" section under "State Operations – General Fund." DOF did not include a narrative summarizing the data contained in this attachment.²⁴

¹⁹ The claimants' September 30, 1999, submittal is in Volume VII at Bates Page 2809.

²⁰ *Id.* at Attachment A, page 1 (Bates Page 2817).

²¹ *Id.* at 2-3 (Bates Pages 2818-2819).

²² *Id.* at 4 (Bates Page 2820).

²³ The Department of Finance's September 30, 1999, submittal is in Volume VII at Bates Page 2755.

²⁴ On October 12, 1999, DOF submitted an amended version of Sheet 1, which includes a corrected number for the 1979-80 fiscal year. Originally, Sheet 1 provided that the state's general fund contribution for 1979-80 was \$160.6 million. The amended Sheet 1 provides that the state's general fund contribution for fiscal year 1979-80 was \$448.7 million.

Attachment 2 is entitled “Legislative Intent Underlying Chapter 797.” In this section DOF states that due to the fact that “Commission Staff has already contracted with Legislative Intent Service to provide a legislative history package for the original challenged Special Education legislation,” it has not undertaken any additional exploration of the legislative intent of Chapter 797.²⁵ In addition, DOF, for the first time, citing Government Code section 17556, subdivision (a)²⁶, submits that Riverside County Superintendent of Schools is prohibited from claiming any reimbursement stemming from the eight program areas because it was a proponent of the bill.

Based upon its review of staff’s legislative history package prepared by the Legislative Intent Service, DOF concludes that:

“As countless documents demonstrate, the Legislature plainly contemplated that local educational agencies would play a significant role in funding the Special Education Program and funding any cost overrides associated therewith.”²⁷

However, DOF does not cite to any exhibits in support of this conclusion other than referring to its July 1980 Enrolled Bill Report on Chapter 797.²⁸

Legislative Analyst’s Office October 13, 1999, Submittal²⁹

LAO submitted comments regarding the legislative intent underlying Chapter 797. LAO begins with an analysis of how special education was funded in the 1970s. LAO provides that special education has been funded through a combination of federal, state, and local sources.³⁰ LAO explains that the purpose of the state’s Master Plan was to “reorient [the state’s] special education delivery system to focus on providing services to children, rather than categorizing children by handicap.”³¹

LAO finds that the legislative history of Chapter 797 supports the conclusion that the state was aware that the Master Plan would create a state mandate. However, LAO notes, the Governor and Legislature, based on their respective staffs’ analyses, concluded that the increased state funding would be sufficient to offset the mandated costs in 1980-81.³² LAO concludes, based on its review of the submitted materials, that these staff analyses were correct at the time they were prepared. However, LAO acknowledges that overall special education costs grew faster than

²⁵ Department of Finance’s September 30, 1999, submittal at Attachment 2 (Bates Page 2797).

²⁶ This section, in pertinent part, provides that the Commission shall find no costs mandated by the state if the claim is submitted by a “school district which requested legislative authority . . . to implement the program specified in the statute.”

²⁷ *Ibid.*

²⁸ *See* Volume VI, Bates Page 2320.

²⁹ The Legislative Analyst’s Office October 13, 1999, submittal is in Volume VII at Bates Page 2977.

³⁰ *Id.* at pages 1-2 (Bates Pages 2979-80).

³¹ *Id.* at 2 (Bates Page 2979).

³² *Id.* at 2-3 (Bates Page 2979-80).

anticipated, which resulted in higher than expected costs to meet the federal mandate, a situation exacerbated by the fact that federal aid has never been provided at the levels promised.³³

LAO finds that while the Legislature intended to increase its support to pay for state-mandated costs associated with the Master Plan, it finds no evidence that “the Legislature’s intent was to *guarantee* sufficient state support” for all objectives of the plan.³⁴ (Emphasis in original.) LAO adds:

“Chapter 797 does not declare the Legislature’s intent to pay all increased costs to comply with the federal special education requirements. Rather, Chapter 797 limits state aid to amounts that, in some instances, clearly are *below* the amount needed to meet federal requirements.”³⁵ (Emphasis in original.)

LAO summarizes that, while it appears that the Legislature and the administration wished to help local education agencies comply with the federal standards, there were no commitments made to pay for all the increased costs associated with federal compliance.

LAO further finds that the Legislature’s unwillingness to commit to local fiscal relief or make long term commitments is evidenced by the “powerful fiscal ‘safety valve’ in Chapter 797 [which allows] the state to unilaterally and unconditionally reduce its total special education costs in any year.”³⁶

On the issue of whether the eight subject program areas received a specific appropriation in accordance with Government Code section 17556, subdivision (e), LAO points out that the Legislature enacted and funded the Master Plan as an entire program. LAO adds that at the time of enactment of Chapter 797, the state could not have linked funding specifically to any special education program because this would run counter to the intent behind the Master Plan – to provide flexibility to school districts. Lastly, LAO notes that Government Code section 17556, subdivision (e), was not enacted until several years after Chapter 797.³⁷ Thus, LAO concludes that at the time Chapter 797 was enacted, the Legislature would have no reason to believe that funds provided for the Master Plan would not be counted against any state mandated local costs.³⁸

³³ *Id.* at 3-4 (Bates Pages 2981-82).

³⁴ *Id.* at 4 (Bates Page 2982).

³⁵ *Id.* at 5 (Bates Page 2983).

³⁶ *Ibid.*

³⁷ *Id.* at 6 (Bates Page 2984).

³⁸ Staff notes that while Government section 17556, subdivision (e), was not in effect at the time of the enactment of Chapter 797, its predecessor section, Revenue and Taxation Code section 2253, subdivision (c), addressed this issue. Section 2253, subdivision (c), provided that claims submitted for reimbursement shall be limited to:

“Claims alleging that a chaptered bill has resulted in costs mandated by the state and that such bill contains neither a provision making inoperative section 2231 or 2234 nor an appropriation to reimburse the claimant for such costs.”

(Sections 2231 and 2234 both explain circumstances under which the state shall reimburse local agencies and school districts for costs mandated by the state.) Section 2253 is attached as Exhibit C.

Department of Finance's October 12, 1999, Submittal³⁹

DOF submitted "three spreadsheets which display the changes to state and federal funding for the special education program over the life of the mandate."⁴⁰ Sheet 1 is an amended version of DOF's September 30, 1999, Sheet 1. The amended version includes a corrected number for the 1979-80 fiscal year. Originally, Sheet 1 provided that the state's general fund contribution for 1979-80 was \$160.6 million. The amended Sheet 1 provides that the state's general fund contribution for fiscal year 1979-80 was \$448.7 million.

DOF includes two new spreadsheets in its October 12, 1999, submittal. Sheet 2 provides the same information as Sheet 1, but the figures are based on past year actuals. Sheet 3 also shows past year actuals for state and federal general fund contributions as well as the local general fund contribution. DOF notes that the local general fund contribution has not varied much over time (less than \$5 million over the past 10 years).⁴¹ DOF also provides a discussion on how local general fund contributions were originally determined under Chapter 797.⁴²

Finally, DOF provides a clarification of comments made at the September 15, 1999, hearing. DOF responded to a question from the Commission pertaining to the amount of federal funding stating it to be, to the best of their recollection, \$700 million. DOF states that this was in error and clarifies that the amount of federal funding for the particular year in question was \$256 million. DOF notes that current federal funding is roughly \$453 million.⁴³

Staff's Analysis of the Legislative History and Intent of Statutes of 1980, Chapter 797 (SB 1870)⁴⁴

Staff finds the following documents address Member Angelides' inquiry regarding the legislative intent underlying the enactment of Statutes of 1980, Chapter 797. The following documents evidence that the Legislature intended to: (1) fully fund the Master Plan and (2) freeze local general fund contributions at the 1979-80 level. Staff notes that the state provided approximately a \$160 million increase in state support for special education over the prior year and a \$90 million increase in state aid over the amount *required by then current law*.

Overall, staff finds that the Legislative intent and history underlying Chapter 797 supports the conclusion that the state intended to fully fund the Master Plan in 1980 and freeze local general fund contributions.

These findings are further supported in "Section 3 – Legislative History and Intent Underlying Chapters that Modified the State's Special Education Funding Scheme." Each of the subsequent chapters cited in Section 3 modified the special education funding scheme; none of them modified the local general fund contribution assumptions. Rather, these Chapters modified how

³⁹ The Department of Finance's October 12, 1999, submittal is in Volume VII at Bates Page 3087.

⁴⁰ *Id.* at page 1 (Bates Page 3087).

⁴¹ *Ibid.*

⁴² *Ibid.* DOF provides that "LGFC was calculated to be the lesser of either the difference between the costs of the special education program in the 1979-80 fiscal year and total funding received for the program in 1979-80 or the current year P2 ADA times the 1979-80 per pupil amount of the difference between cost and funding."

⁴³ *Id.* at 2 (Bates Page 3088).

⁴⁴ Documents cited by staff are attached as Exhibit D.

programs would be reported, what could be reported, or how much could be claimed. Furthermore, several chapters cited in Section 3 evidence that additional revenue was provided for special education from the *state's* general fund to help pay for the annual special education deficit.

The following chart provides a brief summary of the documents that staff believes will address Member Angelides' request for information regarding the legislative intent underlying Chapter 797.

Bates Page #	Document Title	Document Summary
3273	Bill Analysis of SB 1870 by DOF dated 7/1/80.	DOF's Bill Analysis at Table I – Summary provides a breakdown of appropriations and revenues for the MPSE. ⁴⁵ \$51.6 million in additional funds needed to fully fund the MPSE in 1980-81.
3316	Mandated Cost Estimate of SB 1870 by DOF dated 7/1/80.	Under “Summary – State-Mandated Cost Estimate” DOF finds major state-mandated costs for fiscal years 1980-83. However, DOF concludes that the appropriation in SB 1870 is “more than sufficient to fund the added local costs.”
3288	Legislative Analyst analysis of SB 1870 dated 7/2/80.	In the Analysis under “Fiscal Effect – Cost” – LAO states the MPSE will impose a new state cost of \$92.7 million.
3296	Assembly Committee on Ways and Means Analysis of SB 1870 dated 7/3/80.	“Fiscal Impact” section details the appropriations and revenues for the MPSE. On page 3, the analysis provides “difference between total cost and total available revenue is an increase in funds over present expenditures of \$37.1 million for 1980-81.”
3299	Summary of SB 1870 by author Albert S. Rodda dated 7/9/80.	The summary provides a cost estimate worksheet for the MPSE. The total new state cost to be estimated at \$41.8 million (worksheet prepared on 7/7/80).
3304	Enrolled Bill Report of SB 1870 by DOF dated 7/18/80.	Under the “Specific Findings – Local General Fund Contribution” section of the report, DOF states that “this bill would freeze amounts expended from Local General Funds for special education in 1978-79 except for amounts expended for transportation and temporary disabilities.”

⁴⁵ California's Master Plan for Special Education (MPSE).

3269	Education Code Sections 56000 and 56001	Sections set forth legislative findings, declarations, and intent behind California's special Education programs
3270	Education Code Sections 56750-56754	Sections 56751-56753 provide the computations for determining local general fund contributions. Section 56754 provides that the local general fund contribution for each district shall be the lesser amount calculated in sections 56751-56753.
3271	Education Code Section 56826	Section 56826 provides that funds appropriated for special education shall be spent for special education programs.

Staff's Conclusion

Overall, staff finds that the Legislative intent and history underlying Chapter 797 supports the conclusion that the state intended to fully fund the Master Plan in 1980 and freeze local general fund contributions.

3. Legislative History and Intent Underlying Chapters that Modified the State's Special Education Funding Scheme

Statutes of 1981, Chapter 1094 (SB 769)⁴⁶

According to DOF's June 19, 1981, Bill Analysis of SB 769, it concluded that this bill provides "various cost containment provisions for the Special Education program, which is currently experiencing uncontrollable costs and has a projected \$145 million deficit."⁴⁷ Staff finds that SB 769 evidences that the Legislature intended that the state would need to make modifications to the special education funding scheme to address the annual special education deficit. The Legislature could have increased the local general fund contribution to help offset the annual deficit, but chose not to do so. Instead, SB 769 makes programmatic changes to lower the annual deficit. Staff includes SB 769, not so much for the specific programmatic changes, but rather, as evidence that the state has changed the special education funding scheme without requiring additional local general fund contributions.

The following chart provides a brief summary of the documents that staff believes will address Member Angelides' request for information regarding the evolution of the state's special education program as it relates to funding.

Bates Page #	Document Name	Document Summary
3332	DOF bill analysis of SB 769 dated 6/19/81.	Analysis describes the extent of the deficit associated with the MPSE and the various cost containment provisions that will address the shortfall.
3345	DOF bill analysis of SB 769 dated 8/28/81.	The analysis states: "This bill is estimated to reduce the Special Education deficit in 1981-82 to approximately \$30.6 million under the assumption that moderate growth occurs.... However, if all districts grow to their full 10 percent limitation, the deficit is estimated to increase to approximately \$63 million.... State and local education agencies cannot withstand another deficit in Special Education." Includes an analysis of amendments and comments/concerns. Tables I-III provide a list of revenues, entitlements, and savings for the MPSE.

⁴⁶ Documents cited are attached as Exhibit E.

⁴⁷ Department of Finance bill analysis of SB 769.

3339	Analysis of SB 769 prepared for the Assembly Committee on Education's Subcommittee on Educational Reform.	The analysis states: "This bill is intended to reduce the State special education deficit beginning in 1981-82. That deficit was \$90 million in 1980-81 and is expected to rise to \$128-160 million in 1981-82 without this bill. The author estimates that these amendments will reduce the 1981-82 deficit to approximately \$24 million." Analysis provides a breakdown of the proposed amendments, comments, and suggested amendments.
3321	Legislative Analyst analysis of SB 769 dated 8/31/81.	Analysis provides that SB 769 "makes significant changes in existing special education law in an effort to control state cost beginning in 1981-82."
3354	Letter from SB 769 author, Alan Sieroty, to Governor Brown dated 9/16/81.	Letter provides "this bill targets reductions in those areas where our analyses indicated that SB 1870 [797/80] either provided funding in excess of what districts needed, ... or where SB 1870 [797/80] 'grandfathered in' excessively costly methods of providing special education services."
3356	Press release from Governor Brown re: SB 769 dated 9/30/81.	Press release provides "I would also like to express my concern regarding the on-going funding problems in this area. Even with this legislation, there will be a deficiency of approximately \$24.7 million in the 1981-82 fiscal year. Neither the State nor Local Education Agencies can afford deficiencies of this magnitude. I am hopeful that the Legislature will continue working with my administration to develop a long term solution to this problem."

Statutes of 1982, Chapter 1201 (SB 1345)⁴⁸

Statutes of 1982, Chapter 1201, made "numerous changes in existing law governing the program requirements and funding provisions for special education. In addition, this measure allocates the \$35 million provided in the 1982 Budget Act to partially fund the 1981-82 special education deficit."⁴⁹ As in 1981, the Legislature needed to take steps to address an ever-increasing annual special education deficit. Again, several programmatic changes were made to special education,

⁴⁸ Documents cited are attached as Exhibit F.

⁴⁹ Legislative Analyst analysis of Senate Bill 1345, dated August 13, 1982.

some to address drafting errors found in SB 769. Staff includes Chapter 1201, not so much for the specific programmatic changes, but rather, as evidence that the state has changed the special education funding scheme without requiring additional local general fund contributions. However, this time the Legislature included additional state funds to offset the annual special education deficit.

The following chart provides a brief summary of the documents that staff believes will address Member Angelides' request for information regarding the evolution of the state's special education program as it relates to funding.

Bates Page #	Document Name	Document Summary
3378	Analysis of SB 1345 prepared for the Assembly Ways and Means Committee dated 8/11/82	Analysis states that SB 1345 would provide \$19 million of the 1981-82 Special Education Program deficit and \$16 million of the 1981-82 Special Education transportation deficit; leaving a \$13 and \$11 million deficit respectively.
3361	Legislative Analyst analysis of SB 1345 dated 8/13/82	Analysis provides that SB 1345 allocates \$35 million from the 1982 Budget Act to partially fund the 1981-82 special education deficit. This bill makes other amendments to clarify drafting errors, which were made in SB 769. The analysis finds there are several areas that will experience mandate reductions.
3370	Analysis of SB 1345 prepared by the Assembly Committee on Education dated 9/1/82	Analysis provides a section-by-section breakdown of the amendments proposed by SB 1345.
3379	Enrolled Bill Report by DOF dated 9/23/82	Report restates that SB 1345 provides \$35 million to fund the 1981-82 Special Education deficit. Also provides a section-by-section and fiscal analysis of amendments – recommends veto.

Statutes of 1983, Chapter 498 (SB 813)⁵⁰

Statutes of 1983, Chapter 498, known as the Hughes-Hart Education Reform Act of 1983, made “major changes and additions to education law for the purpose of reform and improvement of the K-12 education system in California.”⁵¹ SB 813 made numerous modifications to K-12 education in California. However, staff finds that the Legislature again, through SB 813, attempted to ease the annual special education deficit by providing additional state funds. SB 813 also modified the COLA amount school districts would receive for special education. By increasing the COLA for special education programs to the statutory

⁵⁰ Documents cited are attached as Exhibit G.

⁵¹ Analysis of SB 813 prepared for the Assembly Ways and Means Committee, dated June 9, 1983.

7.4 percent, the Senate Committee on Education estimated that this would provide school districts an additional \$53.4 million. Staff includes Chapter 498, not so much for the specific programmatic changes to K-12 education, but rather, as evidence that the state has changed the special education funding scheme without requiring additional local general fund contributions.

The following chart provides a brief summary of the documents that staff believes will address Member Angelides' request for information regarding the evolution of the state's special education program as it relates to funding.

Bates Page #	Document Name	Document Summary
3390	Summary of SB 813 by the Senate Committee on Education dated 4/19/83.	Summary provides that SB 813 "provides the statutory 7.4% COLA for special education programs. . . . This would increase to 10% along with district revenue limits to prevent further encroachment." SB 813 would also "reduce local general fund contribution by 20% per year. This will reduce the encroachment of special education on the regular program."
3396	Analysis of SB 813 prepared for the Assembly Ways and Means Committee dated 6/9/83.	Analysis provides an overview of SB 813 including its fiscal effect. Provides that SB 813 will "reduce general fund encroachment by 20% per year over the next five years."
3406	Letter from Gary K. Hart, co-author of SB 813 to Governor Deukmejian dated 7/21/83.	Letter outlines the changes to regular education programs as well as the funding modifications. Stresses "the financial provisions of SB 813 are as important as the reforms and they are inextricably linked."
3408	DOF's Enrolled Bill Report dated 7/27/83.	Report details the changes to K-12 programs and funding. DOF provides a fiscal analysis of the bill and a table showing SB 813 increases over the Budget Act.
3423	Governor Deukmejian's press release for SB 813 dated 7/28/83.	Press release provides an overview of the education reforms enacted in SB 813 and the increased funding to support those reforms.

Statutes of 1997, Chapter 854 (AB 602)⁵²

Statutes of 1997, Chapter 854, enacted Assembly Bill 602 (AB 602). AB 602 implemented a new special education funding system and provided a one-time equity adjustment for the 1997-98 fiscal year. AB 602 revamped special education funding in the state. Staff includes this chapter to illustrate that, since the enactment of the Master Plan, the annual special education deficit and encroachment into local general fund monies has increased at an astounding pace. According to DOF's bill analysis of SB 769, in fiscal year 1981-82 the deficit was estimated at

⁵² Documents cited are attached as Exhibit H.

\$24-25 million. By 1997, the deficit had grown from \$400 million to \$1 billion according to Senate Floor Analyses. Staff finds many reasons for such an alarming deficit: increased program costs, more special education students, more savvy and informed parents of special education children, to name just a few. Staff notes that due to such a large annual deficit, school districts are required to ensure that they meet the federal constitutional requirements found in the IDEA before spending federal, state, or local funds on the eight reimbursable state mandated programs.⁵³

The following chart provides a brief summary of the documents that staff believes will address Member Angelides' request for information regarding the evolution of the state's special education program as it relates to funding.

Bates Page #	Document Number	Document Summary
3429	Analysis of AB 602 prepared for the Assembly Committee on Education dated 5/7/97.	<p>Analysis outlines the general provisions of AB 602 and comments on specific provisions of the bill.</p> <p>Goes on to provide that "the cost of funding special education in California for 1996-97, not counting the state special schools, diagnostic centers, state hospitals, developmental centers, CYA, and transportation will be about \$3.4 billion. The State General Fund appropriation is approximately \$2.3 billion (67%); the federal contribution is approximately \$264 million (8%); and the local contribution is approximately \$850 million (25%). Currently, federal law stipulates that the federal contribution is supposed to be approximately 40% (this percentage has never been achieved). However, the federal contribution is usually between 7 and 9%."</p>
3436	Information from Assembly Committee on Education bill file on AB 602 – Financial Documentation	This information ranks districts based on their original local general fund contribution per ADA – also shows current local general fund contribution.
3448	Analysis of AB 602 prepared by the Office of Senate Floor	Document provides analysis of previous and proposed funding models for special

⁵³ Current federal regulations do not permit the state to reduce the amount of state financial support for special education for children with disabilities and require the state to file with the Secretary information to demonstrate that the state will not reduce the amount of state financial support for special education below the amount of that support for the preceding fiscal year. (34 Fed.Reg. § 300.154, subd. (a).) Because federal law requires state and local educational agencies to provide disabled children a free appropriate public education and the state to maintain a certain level of funding from fiscal year to fiscal year, school districts must first expend available funds to meet the federal requirements.

	Analyses	education as well as comments on particular sections and a fiscal analysis of equalization. Specifically, provides that “Since its inception, LEA’s [sic] have complained that the current system of special education funding has been inadequate to meet actual costs. Locals are required to ‘encroach’ on general purpose funding in order to meet the unreimbursed special education costs. Current encroachment is estimated at between \$400 million and \$1 billion.”
3457	DOF Enrolled Bill Report of AB 602 dated 8/21/97.	Bill report provides both a bill and fiscal summary of AB 602 and comments on amendments to AB 602, which were opposed by DOF.

Staff’s Conclusion

Staff notes that this history of state special education funding is far from complete due to the amount of documentation and short turn-around time required to meet the October 28, 1999, hearing deadline. Since its inception, the State’s Master Plan has not been fully funded to avoid annual deficits. As the foregoing history illustrates, the deficit increased dramatically from 1980 to 1997.

In *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1583, the court stated that “In the Rehabilitation Act of 1973, section 504, Congress provided: ‘No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance [citations omitted].’ Since federal assistance to education is pervasive, [citation omitted] section 504 was applicable to virtually all public educational programs in this and other states.” *Hayes* goes on to provide that: “The federal courts [have] concluded that section 504 [is] essentially a codification of the equal protection rights of citizens with disabilities.”⁵⁴ *Hayes* further finds that: “The [IDEA] is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states.”⁵⁵ Therefore, the *Hayes* court concluded that: “Congress intended the [IDEA] to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973.”⁵⁶ The *Hayes* court ultimately concluded that the IDEA is a federal mandate to the state, but instructed the Commission to “focus upon the costs incurred by local school districts and whether those costs

⁵⁴ *Hayes*, 11 Cal.App.4th 1564, 1584.

⁵⁵ *Id.* at 1587.

⁵⁶ *Id.* at 1588-89.

were imposed *on local districts* by federal mandates or by the state's voluntary choice in its implementation of the federal program."⁵⁷

Staff finds that based on the federal constitutional and equal protection rights the IDEA is meant to safeguard for disabled students, school districts were and are required to meet federal requirements before the state's requirements. If, as is the case in eight program areas, the Commission finds the state has imposed new programs upon school districts, reimbursement must follow if there are costs mandated by the state. Therefore, staff contends that if a school district experienced encroachment in any given year, reimbursement must follow in amounts necessary to cover the increased costs associated with any of the eight reimbursable state-mandated programs.⁵⁸ However, if special education costs did not encroach on a district's general fund, no subvention is required.

4. The Proportional Offset Method

The Department of Finance's September 30, 1999, Submittal⁵⁹

DOF explains that its suggested proportional offset method for funding special education is based upon the fact that three funding sources; federal, state and local, were commingled and used to pay for the costs of special education of the disabled in California.

DOF maintains its position that, under Government Code section 17556, subdivision (e), the state is entitled to a total offset of costs claimed by the school districts. DOF further takes the position that subdivision (e):

“as a matter of law, creates an exception and permits all of the state funding provided in a mixed funding program to be deemed allocated first to the state mandated costs if a statute ‘included additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.’”

However, in the event the Commission rejects this position, DOF alternatively asserts that school districts, having used commingled funds, are only entitled to reimbursement for their proportionate share of commingled funds, less any identifiable statewide offsets. Using an example which assumes that federal funding comprises 10 percent of special education funding, states contribute 70 percent of the funding, and locals contribute the remaining 20 percent, DOF concludes that, under its proportional funding method, the school districts, having used commingled funds are only entitled, at most, to reimbursement for the 20 percent attributable to local funding.

DOF developed a four-step approach to be considered when devising a methodology for proportional funding. DOF reiterates its position that this approach is based upon the fact that

⁵⁷ *Id.* at 1595, emphasis in original.

⁵⁸ Government Code section 17557 provides “If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvented to local agencies and school districts for reimbursement.” Section 17555 provides that the Commission shall “determine if there are costs mandated by the state.”

⁵⁹ Staff is unable to provide footnotes to specific page numbers because DOF's filing does not include them in its Attachments.

special education is funded by three sources and that any mandate funding should reflect the proportion in which the funding was provided. The steps recommended by DOF are outlined as follows:

1. Determine the total special education program costs.

It is DOF's position that program cost reports are available which show how local education agencies reported special education costs. However, because cost reporting requirements changed in 1985, DOF recommends that the Commission may wish to designate one fiscal year as the base year for determining the costs. DOF points out that under this step an average statewide percentage could be developed or the Commission could review costs on a district-by-district basis. DOF, in the interests of simplicity, recommends that a statewide average be computed. DOF also recommends, at this step, the term "costs" should be defined as either being limited to marginal costs, which would include direct instruction costs plus documented support costs, or to include indirect administration costs and allocated costs.

2. Determine the total special education funding sources.

This step entails identifying and calculating the funding totals. DOF suggests that, in following this step, the Commission should consider the following and make the appropriate decisions when characterizing the funding sources:

Revenue limits for special day class pupils. DOF states that under the funding model for special day class pupils, the total average revenue limit for each pupil was counted as available for those pupils and was offset to other special education funds from the state. DOF states that the Commission must determine whether these funds are state funds (because they are provided by the state), or local funds (because they are general purpose funds).

Local General Fund Contribution. DOF notes that these funds are based upon "maintenance of effort requirements" and are used to offset state funds. DOF queries whether this funding source should be categorized as local funds (because it is local funding), or state funding (because it is part of the maintenance of effort requirement).

Federal funds. DOF states that local federal entitlement funding is allocated on a per pupil basis and is used as an offset to state funding. However, DOF notes that these funds are also allocated for specific purposes such as staff development and assessments. DOF poses the question: "How much of the federal funds should be included?"

Local Property taxes: DOF queries whether this funding source counts as state funding, since these funds are included as part of the funding formula and also are used in maintenance of effort.

3. Calculate total costs and total revenues by category, and determine percentages.

DOF explains that this step is largely mathematical and can be computed once the totals have been "disaggregated" by funding sources and the percentages of state, local, and federal funding have been determined.

4. For each mandated cost, reimbursement would be limited to the same percentage as the local percentage determined above.

DOF concludes that, for each dollar of state-mandated costs, the state would reimburse only the local share as determined through this proportional method, less any other offsets.

The Claimants' October 7, 1999, Submittal⁶⁰

Claimants, in their response of October 7, 1999, provide further arguments in support of their original position that Government Code section 17556, subdivision (e), does not apply to the eight special education programs at issue.⁶¹

In response to DOF's premise for its proportional offset methodology, claimants object to DOF's implied position that the LEA's are first required to use state funding for state mandated programs before providing funding for federally mandated programs. Claimants state that DOF has provided no legal authority for this conclusion.⁶²

Claimants contend that DOF's continued position that these eight programs should be funded in a proportional manner, similar to that provided under the *Handicapped and Disabled Students* (Santa Clara) Parameters and Guidelines, is inappropriate.⁶³

By way of explanation, prior to the enactment of the Santa Clara test claim legislation, the responsibilities for identifying mental disabilities and providing for mental health related services identified in an IEP were placed on the LEA. The test claim legislation provided that, if an LEA prepared an IEP which recommended referral to a mental health program, the local mental health program shall be responsible for assessing the student and for providing the IEP with a written assessment. At the time of the test claim legislation's enactment, existing law, the Short-Doyle Act, established a funding formula for local mental health programs, whereby the state funded 90 percent of the cost with the local government being responsible for the remaining 10 percent of the costs. Accordingly, the Commission determined that, while the test claim legislation represented a mandate, only 10 percent of the program costs were reimbursable, because the Short Doyle Act provided local governments reimbursement for 90 percent of the costs of providing county mental health services.

Claimants conclude:

“It is unclear how DOF could logically compare a statute that clearly allocates percentages between state and county (Short-Doyle Act), to the special education funding model that does not allocate any percentages. The lack of statutory and case law available to support DOF's position speaks for itself.”⁶⁴

Claimants further assert that DOF's proportional funding method assumes that districts were required to use state special education revenue to fund excess state mandates. It is the claimants' position that this assumption is incorrect, referring to Education Code section 56826 as “the only statute that addresses the expenditure of state special education funds.”⁶⁵ This section provides:

⁶⁰ The Claimants' October 7, 1999, submittal is in Volume VII at Bates Page 2951.

⁶¹ *Id.* at pages 3-4, 6-7 (Bates Pages 2954-55, 2957-58).

⁶² *Id.* at 3-4, 7-8 (Bates Pages 2954-55, 2958-59).

⁶³ *Id.* at 4-6 (Bates Pages 2955-57).

⁶⁴ *Id.* at 5 (Bates Page 2956).

⁶⁵ *Id.* at 7-8 (Bates Pages 2958-59).

“Funds apportioned to districts, special education regions, and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.”⁶⁶

Claimants interpret this section as neither explicitly stating nor implying that LEAs are required to prioritize state funds for state mandated programs.

In conclusion, the claimants contend that “DOF has provided no legal authority for its ‘payment in fact’ theory” upon which it bases its proportional offset method and it has “provided no legal authority for its theory that general special education revenues must be used to fund special education excess state mandates.”⁶⁷ (Emphasis in the original.) Accordingly, claimants conclude that the Commission should reject the proportional offset method as set forth by DOF.

Staff’s Conclusion

Staff agrees with the claimants that this test claim is distinguishable from the Santa Clara test claim. However, staff finds that a proportional funding model, which addresses the concerns of both the claimants and DOF, could be developed if the Commission adopts DOF’s proportional offset method for funding special education.

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⁶⁶ This section was repealed effective July 1, 1998

⁶⁷ Claimants’ October 7, 1999, submittal at 14 (Bates Page 2965).